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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5541

AN ORDINANCE denying the appeals from a decision of the Hearing Examiner approving the Application of MICHAEL'S TOYOTA, Application No. 04-1000086-LB, for a Conditional Use Permit, with conditions to establish an automobile dealership within the existing Sunset Village Shopping Center, and granting the Conditional Use Permit with conditions.

WHEREAS, on April 22, 2004, the City of Bellevue Hearing Examiner conducted a hearing on the application of MICHAEL'S TOYOTA, Application No. 04-100086-LB to establish an automobile dealership within the existing Sunset Village Shopping Center; and

WHEREAS, on May 11, 2004, the Hearing Examiner issued Findings of Fact, Conclusions of Law and Decision, granting the Conditional Use Permit Application No. 04-1000086-LB with conditions; and

WHEREAS, on May 25, 2004 Jennifer S. Robertson, Scott A. Robertson and Michael P. Alford individually appealed the grant of the Conditional Use Permit to the City Council; and

WHEREAS, on May 27, 2004 additional parties were forwarded the Hearing Examiner's decision and the appeal period as to these individuals was extended to June 10, 2004. No appeals were filed from the second mailing to the additional parties; and

WHEREAS, on June 2, 2004, the City Attorney requested clarification of the appeals filed on May 25, 2004, setting the deadline for clarification as June 14, 2004. As requested, the appellants clarified their appeals; and

WHEREAS, the City Council conducted a hearing on the appeal on July 19, 2004 at which time the Appellants Jennifer and Scott Robertson made three preliminary motions, to supplement the record with additional evidence, to continue the hearing and for additional time to present oral argument (motion for continuance joined by Appellant Alford). Council denied the first two motions and the mayor granted the parties an additional five minutes for argument. Thereafter, the parties presented oral argument on the appeal and the hearing was closed. Council moved to continue the matter to July 26, 2004; and

WHEREAS, on July 26, 2004, Council deliberated and requested staff bring back an ordinance denying the appeal for their consideration; and

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WHEREAS, on August 2, 2004 Council voted to deny the appeals from a decision of the Hearing Examiner approving the Application of MICHAEL'S TOYOTA, Application No. 04-100086-LB, for a Conditional Use Permit, with conditions to establish an automobile dealership within the existing Sunset Village Shopping Center, and granting the Conditional Use Permit with conditions; and

WHEREAS, the City has complied with the State Environmental Policy Act and the City Environmental Procedures Code; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES
ORDAIN AS FOLLOWS:

Section 1. The City Council adopts the Findings of Fact of the Hearing Examiner as set forth in "Findings of Fact, Conclusions of Law and Decision" on Conditional Use Permit Application No. 04-100086-LB, issued on May 11, 2004.

Section 2. The City Council adopts the following additional Findings of Fact supported by the record:

1. Appellants failed to produce material and substantial evidence that notice of the Conditional Use Permit Application No. 04-100086-LB did not comply with the Land Use Code.
2. Appellants failed to produce any evidence that the Hearing Examiner violated the appearance of fairness doctrine.
3. The Planning and Community Development staff appropriately appeared before the Hearing Examiner to present the Director's recommendation as provided under the Process I procedures for Hearing Examiner quasi-judicial decisions.

Section 3. The City Council adopts the Conclusions of Law of the Hearing Examiner as set forth in "Findings of Fact, Conclusions of Law and Decision" on Conditional use Permit Application No. 04-100086-LB, issued on May 11, 2004.

Section 4. The City Council adopts the following Conclusions of Law:

1. The appearance of fairness doctrine is not violated by the Hearing Examiner making a decision on a City of Bellevue Conditional Use Permit and receiving compensation for his services from the City of Bellevue.
2. The Planning and Community Development staff acted consistently with the Land Use Code's Process I procedure by presenting the recommendation of the Director at the hearing on April 22, 2004 (LUC 20.35.130, LUC 20.35.173)
3. The appearance of fairness doctrine does not apply to the Planning and Community Development staff.

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4. There was adequate notice of the Conditional Use Permit Application No. 04-100086-LB.

Section 5. The City Council adopts the Conditions of Approval of the Hearing Examiner as set forth in "Findings of Fact, Conclusions of Law and Decision" on Conditional use Permit Application No. 04-100086-LB, issued on May 11, 2004.

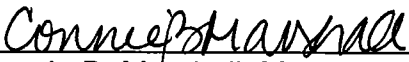
Section 6. Based on the foregoing Findings of Fact, Conclusions and Conditions for Approval, the City Council enters the following Decision:

The City Council concludes that Appellants failed to meet their burden to prove that the Hearing Examiner's Decision and Recommendation that the Conditional Use Permit be approved with conditions, was not supported by material and substantial evidence in the record. The appeal is hereby denied, and the Decision of the Hearing Examiner approving the Conditional Use Permit, with conditions is approved.

Section 7. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

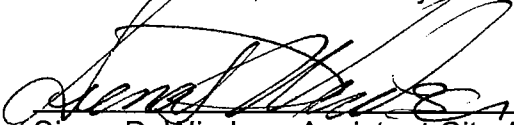
Passed by the City Council this 2nd day of August, 2004, and signed in authentication of its passage this 2nd day of August, 2004.

(SEAL)


Connie B. Marshall, Mayor

Approved as to form:

Lori M. Riordan, Interim City Attorney


Siona D. Windsor, Assistant City Attorney

Attest:


Myrna L. Basich, City Clerk Deputy City Clerk

Published August 6, 2004